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IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1952.

No. 187

WILLIAM E. BODE, et al.,

Appellants,

vs.

EDWARD J. BARRETT as Secretary of State of the State of Illinois, et al.,

Appellees.

APPEAL FROM THE SUPREME COURT OF THE STATE OF ILLINOIS.

BRIEF OF APPELLEES.

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OPINION AND REPORT BELOW.

The opinion of the Supreme Court of Illinois is reported in 412 Ill. 204; 106 N. E. 2d 521 and appears at pages 268-293 of the Record.

JURISDICTION.

Jurisdiction to review this case is based upon Subsection (2) of Section 1257 of Title 28 of the United States Code; Act of Congress June 25, 1948, c. 646 (2), 62 Stat. 929.

STATEMENT OF THE CASE.

This case concerns the validity, under the federal constitution, of an act of the Sixty-seventh General Assembly of Illinois approved by the Governor of Illinois on July 9, 1951 entitled "An Act to amend Section 9, 11a and 20 and to repeal Sections 9b, 9c, 9d, 9e, 9f, 9g, 9h, 9i, 9j, 9k and 9l of the 'Motor Vehicle Law' approved June 30, 1919 as amended". For the convenience of the Court we will hereinafter refer to the 1951 amendatory act as the "1951 Act" and we have attached to this brief as Appendix I a copy of the text of the 1951 Act.

As indicated by its title the 1951 Act was amendatory of the Illinois Motor Vehicle Law of 1919. We believe a brief outline of the history and nature of the basic Motor Vehicle Law will be helpful in appoaching a consideration of the issues in this case. The Motor Vehicle Law was first adopted in 1919 and, subject to various amendments subsequently adopted, remains in effect at the present time. (Ill. Rev. Stat. 1951, Chap. 95½, Secs. 1 *et seq.*)

By Section 2 of the law, motor vehicles are classified into two divisions. Those of the first division are defined as vehicles designed for carrying not more than seven passengers— i. e., passenger cars in the popular sense. The second division is comprised of vehicles designed for pulling or carrying freight, vehicles designed for carrying more than seven passengers and all vehicles not falling within the first division—in short, trucks, busses, tractors, trailers and the like.

From 1919 to date the Motor Vehicle Law has imposed a flat annual registration fee with respect to passenger cars graduated in accordance with the horsepower of the vehicle. (Ill. Rev. Stat. 1951, Chap. 95½, Sec. 8.) The 1951

Act makes no increase or change in passenger car license fee rates and the same are not involved in this case.

Continuously since adoption of the Motor Vehicle Law in 1919 flat annual taxes have been imposed with respect to trucks, busses and other vehicles of the second division. Such taxes have at all times been based upon the gross weight of the vehicle and maximum load and have been graduated in accordance with weight brackets or classifications. By amendments adopted from time to time new weight brackets have been added, existing weight brackets revised and separate classifications and brackets established for special types of vehicles such as trailers and certain types of busses.

In 1921 Section 9a was added to the Act. This section imposed, in addition to the annual flat taxes, a tax on certain carriers for hire at the rate of one-half cent per mile for freight carriers and one-twentieth of a cent per mile per passenger seat for passenger carriers. In 1923 Section 9a was amended and thereafter until 1935 an annual tax, in addition to the annual flat taxes, was imposed upon certain types of carriers of passengers and freight for hire at the rate of $1.00 and later $1.50 per 100 pounds gross weight of vehicle and load. These additional taxes were imposed with respect to a limited class of carriers operating over fixed routes at fixed schedules of rates and the same were discontinued in 1935.

In 1935 the Motor Vehicle Law was amended to include for the first time a so-called optional mileage weight tax (Laws 59th G. A., 1935, p. 1233). This was a tax measured by the number of miles actually travelled in Illinois by the vehicle and graduated as to rates in accordance with the gross weight of the vehicle and load. Monthly reports and payments of tax were required. Vehicle oper-

ators were granted an option to register and be taxed under either the annual flat tax or under the mileage tax provisions. They were not required to pay both.

The Motor Vehicle Law has at all times specifically provided that all taxes upon vehicles of the second division were imposed "for the use of the public highways" of the State. (Appendix I, Section 9.) By Section 36 of the Motor Vehicle Law (Ill. Rev. Stat. 1951, Chap. 95½, Sec. 50) all motor vehicle registration and license taxes collected are required to be set apart in a special "road fund" and used solely for construction, reconstruction, maintenance and patrolling of the public highways and administration of the Act.

The principal changes in the Motor Vehicle Law effected by the 1951 Act may be summarized, generally, as follows:

1. Effective January 1, 1952 the annual flat taxes for vehicles of the second division were increased with provision for further increases effective January 1, 1954.

2. The optional mileage weight tax was repealed thus subjecting all vehicles of the second division to the annual flat tax provisions.

3. Certain flat tax weight brackets were revised and new weight brackets added.

4. Separate weight brackets and tax rates were established for busses operating within municipalities or a close radius thereof.

We think it appropriate to point out here that the rate increases provided by the 1951 Act are the first significant or substantial increases in annual flat taxes on vehicles of the second division since the original enactment of the Motor Vehicle Law in 1919. For thirty-two years annual flat taxes on trucks, busses and trailers re-

mained at substantially the 1919 level. To illustrate these facts we have attached to this brief as Appendix II a chart indicating the weight bracket and corresponding rate changes which have occurred since 1919. Appendix II does not reflect the additional taxes imposed from 1921 to 1935 upon a limited class of carriers for hire nor does it reflect the optional mileage tax in effect from 1935 to 1952. The insignificance of these omissions for present comparative purposes is illustrated by the fact that in 1951 there were only 151 carriers of the class affected by the additional taxes in effect from 1921 to 1935. (R. 227, offered at R. 75). Obviously the class would have been much smaller in the earlier years 1921 to 1935. The small number of vehicles affected by the optional mileage weight tax is illustrated by the fact that in 1949 only 11,935 vehicles out of a total vehicle registration of 336,044 or about 3.5 per cent elected to pay the mileage tax rather than the annual flat tax. (R. 255, columns 1, 2 and 3, offered at R. 114, 115.)

SUMMARY OF ARGUMENT.

I.

Appellants have no standing to challenge the 1951 Act under the commerce clause.

In the court below appellants challenged the validity of the 1951 Act under the commerce clause of the Federal Constitution. The Supreme Court of Illinois held that appellants had standing to raise this constitutional objection by virtue of an Illinois statute (Ill. Rev. Stat. 1951, Chap. 102, Secs. 11-16) permitting a representative suit on behalf of all taxpayers and decided the issue on the merits adversely to appellants' contention. The fact that the Illinois court decided this issue on the merits does not serve to qualify appellants to raise the issue in this Court. In this Court only those within the class as to whom the unconstitutional burden is claimed to exist may raise the objection. Appellants are all intrastate truckers and only three are also engaged in some interstate operations. An intrastate trucker pays no additional tax for engaging in interstate commerce and if he carried on no interstate operations he would still pay the same tax. Thus, no appellant is within the class of interstate carriers as to whom the unconstitutional burden is claimed to exist and no question concerning the validity of the 1951 Act under the commerce clause is properly before this Court.

II.

The 1951 Act does not impose an unlawful burden upon interstate commerce.

It is apparent from the face of the 1951 Act that it applies alike to interstate and intrastate commerce. Hence there is no discrimination against interstate commerce. The Illinois Supreme Court found as fact that the 1951 Act by its explicit terms imposes a tax on motor vehicles for the use of the Illinois highways and allocates all proceeds of the tax exclusively to highway purposes. Thus the tax is levied on the privilege of using Illinois highways and not on the privilege of doing an interstate business.

The court below found as a fact that the formula adopted by the Illinois General Assembly was based on a thorough study of Illinois highway needs which took into account the average annual mileage of different weight classifications of motor vehicles; further, that this formula equalizes on a ton-mile basis taxes paid by passenger vehicles and all other types of vehicles. Thus the formula has a rational basis.

A state may levy a flat annual tax on motor vehicles and need not gear such tax to vehicle mileage. The fee is for the privilege of a use as extensive as the carrier wills. But the 1951 Act should not be viewed alone. When the 1951 Act is considered in conjunction with the motor fuel tax it will be seen that the total tax paid by motor vehicle operators for the privilege of highway use does vary with actual miles travelled.

The tax is not excessive in amount. The total amount raised by the motor vehicle tax, together with the revenue raised by the motor fuel tax will produce only 60 per cent of the revenue needed by the State of Illinois for highway purposes, and the court below so found.

As applied to individual carriers the taxes imposed by the 1951 Act do not exceed fair compensation for the privilege granted since the privilege is an unlimited use of the state roads for the license period.

III.

The 1951 Act is not arbitrary or discriminatory in violation of the Fourteenth Amendment.

Appellants' contention that the 1951 Act is violative of the Fourteenth Amendment because not framed on the basis of a mileage tax is without merit under the decisions of this Court. In any event the taxes imposed by the 1951 Act are based upon a formula calculated to equalize the taxes paid by truck operators with those paid by passenger car operators on a ton-mile basis taking into account average annual mileage travelled by vehicles of various weight classifications.

Appellants' contention that to be valid a state motor vehicle tax law must afford lower rates of taxes to private carriers than those imposed on carriers for hire is without merit. Although a state, if it chooses, may impose higher taxes on carriers for hire than those imposed on private carriers, there is no constitutional requirement for such a differentiation and the state may validly tax both classes alike.

IV.

Section 20 of the Act is not Violative of Section 8 or Section 10 of Article I or of Amendment XIV of the Constitution of the United States.

Illinois offers to all nonresidents the right to operate their motor vehicles over Illinois highways tax-free, provided the state of the nonresident grants like privileges to Illinois residents. Reciprocity provisions like those in Section 20 of the 1951 Act have been enacted by the great majority of states and promote alike the convenience of the state in administering motor vehicle tax laws and the convenience of operators of motor vehicles in interstate commerce.

Section 20 does not burden interstate commerce or unlawfully discriminate against one from a nonreciprocal state, nor against a resident taxpayer, in favor of those from reciprocal states. This Court has upheld the propriety of such reciprocal legislation. In any event, appellants may not complain of any asserted discrimination against nonresidents from nonreciprocal states as they are not members of that class.

Reciprocal provisions of state statutes, a feature common to many state laws, without as well as within the field of motor vehicle taxation, are not prohibited by Article I, Section 10 of the Federal Constitution, the so-called "compact clause". This clause has reference to political alliances and the formation of any combination tending to increase the political power of the states. This Court has never held the reciprocal provisions of a state statute to be unconstitutional and, indeed, has indicated approval of the reciprocal features of state motor vehicle tax laws.

Appellants cannot complain that Section 20 of the 1951 Act constitutes an unlawful delegation of state legislative power as no such objection was raised by appellants in their Specification of Errors in this Court. In any event, the delegation of power within the framework of state government is a matter with which the Federal Constitution has no concern. In its opinion the Supreme Court of Illinois defined the powers and duties of the Secretary of State under Section 20 of the 1951 Act and limited his duties to ascertaining which states grant reciprocity and confined his powers to embodying those findings in the official form of a reciprocity agreement. This finding of the Illinois Supreme Court conclusively establishes the meaning of the statue and disposes of any contention that broad legislative power is delegated to the Secretary of State.

V.

The Provisions of Section 9 of the 1951 Act Relating to Busses Operating Within Municipalities or a close Radius Thereof do not Constitute an Unlawful Delegation of Legislative Authority and are not subject to Objection on the Ground of Indefiniteness.

Appellants charge that Section 9 (1) (7) is so vague and indefinite, and vests discretion in the administrative authorities which is so broad, as to be arbitrary in violation of the Fourteenth Amendment. The court below expressly found in its construction of the 1951 Act that neither Section 9 (1) (7), nor the word "municipality" nor the phrase "or a close radius thereof" contained therein, were vague and indefinite. The Illinois Supreme Court construed all of the foregoing and gave each a precise meaning which is binding. The construction of a state statute by the state's court of last resort is final and controlling everywhere. This construction eliminates any basis for appellants' contention.

ARGUMENT.

I.

Appellants have no standing to challenge the 1951 Act under the commerce clause.

Throughout their brief appellants have urged the invalidity of the 1951 Act upon the ground that it imposes an unlawful burden upon interstate commerce in violation of Section 8 of Article I of the United States Constitution. We submit that the appellants have no standing in this Court to challenge the 1951 Act on this ground.

The appellants are eleven in number. Each is an individual who is a resident of Illinois. Each is engaged in intrastate trucking operations within Illinois. Eight of the eleven are holders of certificates of convenience and necessity as local carriers under the provisions of the Illinois Truck Act (Ill. Rev. Stat. 1951, Chap. 95½, Secs. 240-282) (R. 2, 21). The remaining three operate as private carriers. The trucking operations of each of appellants is confined entirely to the State of Illinois with the possible exception of two of the eleven.

Manford MacPherson testified that he resides at White Hall, Illinois and is engaged in farming and trucking. His testimony shows that he is engaged in extensive intrastate trucking throughout Illinois (R. 78-81). During the course of his testimony this appellant stated that "we haul considerable amount of apples and fruit, some of which will go out of state" (R. 79) and "my transportation of cattle and hogs is either Chicago or St. Louis" (R. 81).

Buell Ford, another appellant, testified that he resides at Roodhouse, Illinois, and is engaged in farming and

trucking (R. 82). In the course of his testimony as to his trucking operations he stated ". . . they hire you to haul to St. Louis and Chicago" (R. 83).

The foregoing is the sole evidence in the record as to interstate activities by any of the appellants. The nature and extent of the interstate operations by MacPherson and Ford is not shown and for aught that appears such hauling was, at most, sporadic or occasional and so exceedingly small in comparison with their intrastate activities as to be *de minimis*.

As residents of Illinois, MacPherson and Ford make extensive use of Illinois highways in intrastate commerce and are taxed on a parity with all other truck owners and operators. The license fees which they pay to Illinois give them the full privilege of unlimited use of the Illinois highways for the registration period. These license fees are neither increased nor diminished by reason of use of the vehicles in interstate commerce. Any of the appellants whose operations are confined solely to Illinois could commence interstate operation without the payment of additional taxes to Illinois. Likewise any appellant engaging in both intrastate and interstate operations could cease his interstate operations but would nevertheless be required to pay the Illinois taxes because of his intrastate operations. Since each of the appellants is required to pay the Illinois taxes because of his intrastate operations it is apparent that none are within the class of interstate vehicle operators as to whom the unconstitutional burden is claimed to exist. Consequently they are not entitled to rely upon the commerce clause in this Court. In *Southern Railway Co.* v. *King*, 217 U. S. 524, this Court said (p. 534):

> "It is the settled law of this court that one who would strike down a state statute as violative of the

> Federal Constitution must bring himself by proper averments and showing within the class as to whom the act thus attacked is unconstitutional. He must show that the alleged unconstitutional feature of the law injures him, and so operates as to deprive him of rights protected by the Federal Constitution."

See also, *Missouri, Kansas and Texas Ry.* v. *Cade,* 233 U.S. 642, 648; *Massachusetts* v. *Mellon,* 262 U.S. 447, 488; *Hendrick* v. *Maryland,* 235 U.S. 610, 621; *Clark* v. *Paul Gray, Inc.,* 306 U.S. 583, 595-596.

The Supreme Court of Illinois held that appellants had standing in that Court to challenge the validity of the tax under the commerce clause of the Federal Constitution because an Illinois statute (Ill. Rev. Stat. 1951, Chap. 102, Secs. 11-16) permits suits by taxpayers to restrain disbursement of public moneys in connection with the enforcement of a state law alleged to be unconstitutional. The Supreme Court of Illinois then proceeded to a determination on the merits adverse to appellants' contention. However, that form of qualification of a litigant to raise a question of constitutionality in a state court does not serve to give the party a right to raise the constitutional question in this Court. Despite the fact that a state court may pass upon the merits of a constitutional question, the appellant, to be entitled to a review by this Court, must show that he is directly and personally aggrieved by the statute. This the appellants here cannot do. *Tyler* v. *Judges,* 179 U.S. 405, 410; *Smith* v. *Indiana,* 191 U.S. 138; *McCandless* v. *Pratt,* 211 U.S. 437; *Southern Railway Co.* v. *King,* 217 U.S. 524.

A case directly in point is *Miles* v. *Department of Treasury,* 209 Ind. 172; 199 N.E. 372 (appeal dismissed 298 U.S. 640), where appellants brought an action as taxpayers on behalf of themselves and others similarly situated to

enjoin state officials from paying out state funds for the printing of the Gross Income Tax Act of 1933 on the ground that the statute was violative of both the State and Federal Constitutions. The Supreme Court of Indiana considered the claims of unconstitutionality on the merits and upheld the validity of the Act. In dismissing the appeal this Court said (298 U.S. 640):

> "The appeal herein is dismissed upon the ground that the appellants have failed to show any interest entitling them to invoke the protection of the Federal Constitution. *Tyler* v. *Judges of Court of Registration*, 179 U.S. 405, 406, 407, 410; *Southern Ry. Co.* v. *King*, 217 U.S. 524, 534; *Standard Stock Food Co.* v. *Wright*, 225 U. S. 540, 550."

II.

The 1951 Act does not impose an unlawful burden upon interstate commerce.

Although we have demonstrated in Point I, above, that appellants have no standing in this Court to challenge the 1951 Act under the commerce clause, nevertheless we will show that the claim of an unconstitutional burden on interstate commerce is without merit.

In *Capitol Greyhound Lines* v. *Brice*, 339 U.S. 542, the most recent case in which this Court considered the application of state motor vehicle taxes to interstate commerce, this Court said (p. 544):

> ". . . Courts have invoked the commerce clause to invalidate state taxes on interstate carriers only upon finding that: (1) the tax discriminated against interstate commerce in favor of intrastate commerce; (2) the tax was imposed on the privilege of doing an interstate business as distinguished from a tax exacting contributions for road construction and maintenance

or for administration of road laws; or (3) the amount of the tax exceeded fair compensation to the state."

The 1951 Act is valid under each of these three tests.

1. The 1951 Act does not discriminate against interstate commerce in favor of intrastate commerce.

The taxes imposed by the 1951 Act apply equally to interstate and intrastate commerce. Hence, the statute may not be said to discriminate against interstate commerce.

2. The 1951 Act imposes a tax for road construction and maintenance purposes.

The tax imposed by the 1951 Act is an exaction for the purpose of road construction and maintenance and administration of road laws. In its decision in this case the Supreme Court of Illinois held (412 Ill. 204, 216; R. 277):

> "The act imposes a tax on motor vehicles for the use of public highways by its explicit terms, which tax, pursuant to the Motor Vehicle Act, must be deposited in a special road fund to be used only for retirement of bonded indebtedness for construction of highways, payment of the cost of administration of said act, and for improvement and maintenance of the highways of the State."

It is thus apparent that the tax is not levied upon the privilege of doing an interstate business. *Capitol Greyhound Lines* v. *Brice,* 339 U.S. 542, 544; *Aero Mayflower Transit Co.* v. *Railroad Commissioners,* 332 U. S. 495, 504-505.

3. The taxes imposed by the 1951 Act do not exceed fair compensation to the State for the privilege granted.

The burden of proof in respect to the claim that the taxes imposed by the 1951 Act are unreasonable in amount and exceed fair compensation to the State for the privi-

lege granted rested upon appellants. *Capitol Greyhound Lines* v. *Brice*, 339 U.S. 542, 548; *Clark* v. *Paul Gray, Inc.*, 306 U.S. 583, 599; *Interstate Busses Corp.* v. *Blodgett*, 276 U.S. 245, 251. We submit the record in this case is wholly barren of any evidence to sustain a charge that the amount of the taxes in question is unreasonable or excessive. On the contrary, the record supports the conclusion of the Supreme Court of Illinois that:

> ". . . the taxes imposed by the amended act have a reasonable basis, are not discriminatory, and do not produce a revenue in excess of fair and reasonable compensation for the privilege of using the State roads." (412 Ill. 204, 228; R. 287.)

First. Throughout their brief appellants have assailed the taxes imposed by the 1951 Act as failing "to provide any fair relationship between the amount of the tax and the use of the highways" (Appellants' Brief, page 18; and see similar statements at pages 5, 9, 12, 14, 17, 20 and 25); as being "devoid of a rational basis" and "in excess of fair compensation for the privilege of using the Illinois highway system" (Appellants' Brief, page 23). These assertions are made "at large" with repeated references to the annual tax of $1588 imposed upon vehicles in the 50,000 to 72,000 pounds class after January 1, 1954 (Appellants' Brief, pages 5, 13, 19, 23) as though a tax in such amount were unreasonable and invalid *per se*. Appellants have failed utterly to discharge the burden which rested upon them to establish that the taxes imposed by the 1951 Act, in fact, are in excess of fair compensation to the State for the unlimited privilege of use of the State's highways. On the contrary, appellants have ignored the evidence in the record which demonstrates beyond dispute the rational basis for the taxes imposed and the reasonableness of the amounts thereof.

The evidence on behalf of the State shows without dispute that in passing the 1951 Act, the Illinois General Assembly fixed the tax rates in accordance with the findings and recommendations of a study made by the Illinois Department of Public Works and Buildings. This study and the evidence in support of the same were presented at the trial by Frank N. Barker, Chief Highway Engineer of the Department of Public Works and Buildings (R. 96). Mr. Barker identified and explained Defendants' Exhibit 2 (R. 255, offered at R. 114, 115) as having been prepared under his direction and supervision. This exhibit is a statistical table reflecting in detail calculations made to equalize payments of motor vehicle license fees and motor fuel taxes[1] by operators of trucks, busses and other vehicles of the second division with those made by operators of passenger cars on a ton-mile basis. In his testimony Mr. Barker gave an explanation of the various columns and calculations reflected in Defendants' Exhibit 2 (R. 255, offered at R. 114, 115). His testimony in this regard appears at pages 99 to 109 of the record. A summary of this evidence is set forth in the opinion of the Supreme Court of Illinois. (412 Ill. 204, 214-216; R. 275-277).

The study established that Illinois passenger car operators paid motor vehicle license taxes and motor fuel taxes (the proceeds of which are used exclusively for highway purposes) equivalent to $0.00251 per ton-mile of travel per vehicle (R. 255, Column 17, offered at R. 114, 115; 412 Ill. 204, 216; R. 276). The study further showed that, except with respect to trucks of 3,000 pounds or less gross

[1] The Motor Fuel Tax Law imposes a tax "on the privilege of operating motor vehicles upon the public highways of this State", at specified rates per gallon of fuel consumed in vehicles upon such highways. (Ill. Rev. Stat. 1951, Chap. 120, Sec. 418). Section 8 of that Act (Chap. 120, Sec. 424) requires that all taxes collected under the Act be placed in a special fund in the State Treasury to be known as the "Motor Fuel Tax Fund" and devoted to public highway purposes.

weight, motor truck operators were paying substantially less taxes per ton-mile than were passenger car operators. In making such calculations it was necessary to take into consideration, the average miles travelled per year by the various weight classifications of vehicles. The source of such annual average mileage figures was summarized by the Supreme Court of Illinois as follows:

> "These figures were taken from a comprehensive report made in 1948 covering the Illinois highway problem by an independent engineering concern employed by the State of Illinois for that purpose.
>
> "From evidence introduced at the trial, such average travel-per-year figures were based on the results of a questionnaire survey of motor vehicle owners and operators made in the late thirties in Illinois and other States, as were other figures used, such as fuel consumption, modified as justified by later information." (412 Ill. 204, 215; R. 276).

The study then proceeded to determine what amounts of annual motor vehicle flat taxes should be paid with respect to the various weight classifications of trucks in order to equalize the ton-mile payments of motor vehicle taxes and motor fuel taxes by truck operators with those paid by passenger car operators.

The results of the study, in summary form, are shown in the following table taken from Defendants' Exhibit 2, (R. 255, offered at R. 114, 115):

	Trucks	Average Travel Per Year	License Fee as Equalized	License Fee S. B. 96 Effective Jan. 1, 1954
		(4)	(22)	(23)
A	3000# and less	7,500	$ 1.62	$ 5.00
B	3001# to 8000#	10,000	21.29	21.00
C	8001# to 10000#	12,500	57.66	58.00
D	10001# to 12000#	16,000	87.11	87.00
E	12001# to 14000#	18,500	113.89	114.00
F	14001# to 16000#	20,500	141.24	141.00
G	16001# to 20000#	23,500	215.89	216.00
H	20001# to 24000#	28,000	351.95	352.00
Bus	24000# to 36000#	30,000	545.59	545.00
X	24001# to 41000#	36,500	810.47	588.00 810.00 890.00
K	41001# to 45000#	36,500	979.61	980.00
L	45001# to 50000#	36,500	1,097.96	1,098.00
N	50001# to 59000#	36,500	1,244.81	1,245.00
P	59001# to 72000#	36,500	1,587.98	1,588.00

The left hand column indicates the various weight classifications of vehicles. The second column numbered "4" shows the average annual mileage figures used in making the calculations contained in the study. The third column numbered "22" shows the amount of the annual license fee for each weight classification required to accomplish equalization with passenger cars. The fourth column numbered "23" reflects the schedule of license fees effective January 1, 1954 as adopted in the 1951 Act.

It will be seen from the foregoing that, with immaterial modifications, the Illinois legislature in passing the 1951 Act adopted the schedule of license fees resulting from the equalization study, and a finding to this effect was made by the Supreme Court of Illinois in its opinion (412 Ill. 204, 216; R. 277):

> "Flat license fees per weight bracket as adopted by the 1951 amendment apply and adopt the license fees as thus equalized, rounded out to the nearest dollar."

It should be noted that the taxes imposed by the 1951 Act will not produce revenue in excess of the State's needs for highway purposes. The evidence demonstrates that during the 1951-60 period the State will have a total need for $1,151,041,232.00 for highway purposes (R. 253, offered at R. 114, 115), and that the revenue produced by the 1951 Act, together with taxes collected under the Motor Fuel Tax Act will yield a net amount available for highway purposes of only $676,961,887.00 (R. 254, offered at R. 114, 115), leaving a deficiency of $474,079,345.00 (R. 253, 254, offered at R. 114, 115; 412 Ill. 204, 214; R. 275). This fact was confirmed by the Supreme Court of Illinois which stated in its opinion (412 Ill. 204, 228; R. 287):

> "The evidence clearly discloses that the Motor Vehicle Law and the Motor Fuel Tax Act impose taxes which will produce approximately sixty percent of the revenues needed by the State for the maintenance, improvement and construction of State highways in the next several years, and under the terms of said acts such revenues must be so used."

We submit that the foregoing clearly demonstrates the rational basis of the tax schedules imposed by the 1951 Act and that the amounts fixed are fair and reasonable in the light of the needs of the State for highway purposes.

Second. Appellants assert that the "optional mileage tax provided an alternative tax which obviated the discriminatory result now existing and its repeal completely obliterated any safeguards against unreasonable taxation under the 1951 Amendment" (Appellants' Brief, page 13). Again they say "this burden upon Interstate Commerce resulting from the 1951 Amendment could have been obviated had the mileage weight provisions of the prior enactment been retained" (Appellants' Brief, pages 17, 18).

It should be borne in mind that the tax imposed by the 1951 Act is for the unlimited privilege of using the Illinois

highways. Having paid the tax a carrier is free to use the Illinois highways as much or as little as it chooses during the registration period. "The fee is for the privilege of a use as extensive as the carrier wills that it shall be". *Aero Transit Company* v. *Georgia Commission*, 295 U. S. 285, 289.

The existence of the optional mileage tax during the 1935 to 1952 period gives appellants no vested right to a continuance of such enactment. The legislature in its discretion had the clear right to repeal such provisions and to frame the motor vehicle tax of Illinois upon a basis other than that of a direct mileage tax. This Court has repeatedly sustained the validity of state motor vehicle laws imposing flat annual taxes from *Hendrick* v. *Maryland*, 235 U. S. 610, in 1915, to *Aero Mayflower Transit Co.* v. *Railroad Commissioners*, 332 U. S. 495, in 1947, the last time this Court passed upon the matter. Likewise this Court has squarely held that such laws to be valid need not be framed upon the basis of a mileage tax. In *Aero Mayflower Transit Co.* v. *Georgia Public Service Commission*, 295 U. S. 285, this Court said, (p. 289):

> "The appellant urges the objection that its use of roads in Georgia is less than that by other carriers engaged in local business, yet they pay the same charge. The fee is not for the mileage covered by a vehicle. There would be administrative difficulties in collecting on that basis. The fee is for the privilege of a use as extensive as the carrier wills that it shall be. There is nothing unreasonable or oppressive in a burden so imposed. Cf. *Clark* v. *Poor* (274 U. S. 554), *supra*; *Hicklin* v. *Coney* (290 U. S. 169), *supra*. One who receives a privilege without limit is not wronged by his own refusal to enjoy it as freely as he may."

See also: *Capitol Greyhound Lines* v. *Brice*, 339 U. S. 542; *Aero Mayflower Transit Co.* v. *Railroad Commis-*

sioners, 332 U. S. 495; *Clark* v. *Paul Gray, Inc.*, 306 U. S. 583; *Dixie Ohio Express Co.* v. *State Revenue Commission*, 306 U. S. 72; *Hicklin* v. *Coney*, 290 U. S. 169.

The principal theme of appellants' argument, recurring throughout their brief, seems to be that the Illinois legislature should have adopted some method of taxation other than an annual lump sum license fee and, more particularly, a tax having a formula directly related to the mileage travelled by an individual carrier. Such an argument could properly have been made before the legislature. But the decisions of this Court show clearly that the broad range of legislative discretion is such that the judgment of the legislature is not open to challenge here, provided the annual tax is a fair charge for the privilege of using the State's highways for the registration period. On this exact point this Court said in *Capitol Greyhound Lines* v. *Brice*, 339 U. S. 542, 546, 547, answering contentions similar to those made by the appellants:

> ". . . But with full appreciation of congenital infirmities of the Maryland formula—and indeed of any formula in this field—as well as of our present rules to test its validity, we are by no means sure that the remedy suggested by appellants would not bring about greater ills. Complete fairness would require that a state tax formula vary with every factor affecting appropriate compensation for road use. These factors, like those relevant in considering the constitutionality of other state taxes, are so countless that we must be content with 'rough approximation rather than precision'. *Harvester Co.* v. *Evatt*, 329 U. S. 416, 422-423. Each additional factor adds to administrative burdens of enforcement, which fall alike on taxpayers and government. We have recognized that such burdens may be sufficient to justify states in ignoring even such a key factor as mileage, although the result may be a tax which on its face appears to bear with unequal weight upon different carriers. *Aero Transit Co.* v. *Georgia Comm'n*, 295 U. S. 285, 289. Upon this

type of reasoning rests our general rule that taxes like that of Maryland here are valid unless the amount is shown to be in excess of fair compensation for the privilege of using state roads."

But even though, as we have shown, a state may validly impose a flat annual license tax graduated in accordance with weight upon all classes of truck operators, it should be noted that in fact in Illinois *total* taxes paid by truck operators for road construction and maintenance purposes do vary in direct relation to mileage travelled. The taxes imposed by the Motor Vehicle Law should not be viewed alone but must be considered in conjunction with the tax on motor fuel imposed by the Motor Fuel Tax Law. (Ill. Rev. Stat. 1951, Chap. 120, Sec. 417 *et seq.*). The latter act levies a tax (Sec. 418):

". . . on the privilege of operating motor vehicles upon the public highways of this State, at the rate of three cents per gallon of all motor fuel used in such motor vehicles upon such public highways prior to August 1, 1951, at the rate of four cents per gallon of all motor fuel used in such motor vehicles upon such public highways after July 31, 1951, and prior to January 1, 1953, and at the rate of five cents per gallon of all motor fuel used in such motor vehicles upon such public highways after December 31, 1952."

Section 8 of the Act (Ill. Rev. Stat. 1951, Chap. 120, Sec. 424) requires that all money received under the Act be placed in a special fund in the State Treasury to be known as the "Motor Fuel Tax Fund" and devoted to public highway purposes.

It will thus be seen that the annual license fees imposed by the Motor Vehicle Law constitute minimum amounts payable by all motor truck operators in the state but that, in addition, they are required to pay the motor fuel tax which will vary in direct proportion to the amount of fuel

purchased and consumed. Therefore, considered together the net effect of the two acts is that the total amount of the tax paid by motor truck operators will vary in accordance with the amount of motor fuel consumed which, of course, is directly related to the number of miles travelled by the vehicle. The amount of revenue received by the State from the motor fuel tax is substantially greater than the amount of revenue derived from the license fees under the 1951 Act. Defendants' Exhibit No. 1 (R. 254, offered at R. 114, 115), which was the estimate of receipts for the period 1951 to 1960, inclusive, based on the increased motor fuel tax rates provided by section 2 of the Motor Fuel Tax Law and upon the increased license tax rates provided by the 1951 Act, demonstrates that the total revenue to be raised under both acts will be $1,728,653,856. Of this amount motor vehicle license fees will contribute $650,496,803 and the motor fuel tax receipts will contribute $1,078,157,053 (R. 254, offered at R. 114, 115). It will thus be seen that approximately 63 per cent of the taxes paid by owners and operators of motor vehicles for highway purposes will be realized from the motor fuel tax which is in effect a tax based upon the number of miles traveled. The propriety of considering as a unit all taxes levied by the State for the privilege of using its highways has been recognized by this Court. In *Capitol Greyhound Lines* v. *Brice*, 339 U. S. 542, the Court said, at page 546:

> "And it should be noted that the total charge of Maryland for the privilege of using its roads will not show the same disparity among carriers. For Maryland also charges a mileage tax, and this tax added to the title tax is what Maryland actually charges for its road privileges. Thus the total charge as among carriers does vary substantially with the mileage travelled."

III.

The 1951 Act is not arbitrary or discriminatory in violation of the Fourteenth Amendment.

In Point I of their brief, appellants urge that the taxes imposed by the 1951 Act, are arbitrary and unreasonable in violation of the Fourteenth Amendment. Their argument appears to be based upon two propositions for which appellants cite no authority and which we will demonstrate to be wholly without merit.

First, at page 12 of their brief, appellants say:

> "... this failure to recognize the basic differences in the average mileages of different classes of users necessarily renders the 1951 Amendment unconstitutional and void."

In Point II above, we have shown that the 1951 Act adopted the tax schedules arrived at as a result of a survey and study conducted by the Illinois Department of Public Works and Buildings for the purpose of equalizing motor vehicle taxes and motor fuel taxes paid by truck operators with similar taxes paid by passenger car owners (pages 17-19, *supra*). We have also shown that in arriving at such equalization the average miles traveled per annum by the various weight classifications for trucks were taken into consideration and that hence the taxes imposed by the 1951 Act are in part based upon a mileage factor (pages 17-19, *supra*). But irrespective of this fact, we have also pointed out that this Court, when considering the validity of state motor vehicle tax laws assailed as constituting an unreasonable burden upon interstate commerce, has consistently held that such laws to be valid need not be framed on the basis of mileage taxes (pages 20-22, *supra*).

Likewise this Court has considered and rejected the argument that a state motor vehicle tax law is invalid under the Fourteenth Amendment because not framed on the basis of a mileage tax. In *Carley & Hamilton* v. *Snook*, 281 U. S. 66, two carriers whose operations were confined largely to municipalities contended they should not be required to pay state motor vehicle license fees because they did not use the state highways and did not operate to any substantial extent outside the confines of municipalities. The carriers asserted that the application of the state license fees to them amounted to a violation of the Fourteenth Amendment. This Court in overruling such contentions said (p. 71, 72):

> "Whatever other descriptive term may be applied to the present registration fees, they are exactions, made in the exercise of the state taxing power, for the privilege of operating specified classes of motor vehicles over public highways, and expended for state purposes. Such fees, if covered into the state treasury and used for public purposes, as are general taxes, obviously would not offend against the due process clause. Nor can we see that they do so the more because the state has designated the particular public purposes for which they may be used. There is nothing in the Federal Constitution which requires a state to apply such fees for the benefit of those who pay them. See *Thomas* v. *Gay*, 169 U. S. 264, 280.
>
> "A corollary of this contention is that although the fees are not *per se* disproportionate to the privilege of operating over all the highways of the state, appellants are nevertheless entitled to receive licenses limiting the operation of their motor cars to the few highways which they wish to use, upon payment of correspondingly reduced fees. But no constitutional principle is suggested, and we know of none, which would enable a licensee thus to regulate the extent of the privilege granted or to assail an otherwise valid tax upon it merely because a reduction of the privilege and the tax would better suit his convenience or his pocketbook."

Second, at page 12 of their brief, appellants say:

> "Since the private carrier has an absolute right to the use of the highways and a carrier for hire has a qualified and restricted use, such differences must be recognized if the validity of this tax is to be sustained."

Appellants' assertion that a private carrier has an absolute right to the use of state highways is without foundation. Appellants cite no authorities in support of their contention and we know of no such holdings. On the contrary, this Court and other courts have consistently held that no one has "an absolute right to the use of the highways". It has always been recognized that where a state expends large sums to build improved highways, it may absolutely deny the use of them to any and all except those who pay the license taxes exacted by the state for the use of such roads. In cases involving private carriers, this Court so held in *Hendrick* v. *Maryland*, 235 U. S. 610, and in *Kane* v. *New Jersey*, 242 U. S. 160. In the *Hendrick* case, this Court said (p. 623, 624):

> "In view of the many decisions of this court there can be no serious doubt that where a State at its own expense furnishes special facilities for the use of those engaged in commerce, interstate as well as domestic, it may exact compensation therefor."

This Court has never departed from that rule.

Appellants' second fallacy, stemming from the first, is that a state is required to fix license taxes for private carriers at a lower level than the taxes for carriers for hire. Nothing exists either in legal precedent or logic to support such a claim. The point was expressly decided contrary to appellants' contention in *Eavey Co.* v. *Department of Treasury of Indiana*, 216 Ind. 255, 24 N. E. 2d, 268 (1939). There suit was brought by certain shipper-owners of trucks attacking the validity of the Indiana Motor Vehicle Weight

Tax. Among other things it was contended that under the 1933 Act certain taxes were imposed upon carriers for hire which did not apply to the operation of trucks by shipper-owners. A subsequent Act of the legislature removed the exemption as to trucks of shipper-owners so that they were taxed on the same basis according to weight as were trucks of carriers for hire. The court held that the taxation of trucks of shipper-owners and those of carriers for hire upon the same basis was entirely reasonable and not subject to constitutional objections, saying (24 N. E. 2d 271):

> "It is well known that under the law existing before the enactment of Chapter 255 certain shipper-owners were not taxed. The Legislature evidently concluded that the untaxed shipper-owner possessed an advantage over contract carriers and those who kept trucks for hire, and concluded that one caused as much wear and tear on the highways as the others, and that the shipper-owner in all fairness should be subject to a tax in order to pay his proportionate part of the construction and upkeep of the highways. Instead of subdividing the class and exempting certain owners of trucks as was done, by the 1933 act, both trucks used by owners in transporting their own products and trucks used for hire are placed in the same class, and made subject to the same weight tax by Chapter 255.
>
> "This question was one of policy for the Legislature and is one with which the courts are not concerned. The legislative history of the control, regulation, and taxation of motor vehicles upon the public highways of the state discloses that throughout the Legislature has classified vehicles; that the classifications have been upheld uniformly by this court; and the right and authority of the Legislature to place a tax upon one subdivision and not upon another has been sustained as a state policy. The authorities cited by appellants sustain the right to classify. The requirement is that all coming within the same classification must be treated alike. When a classification is reasonable it is not violative of the provisions of the Constitutions, state or federal."

An appeal from the decision of the Supreme Court of Indiana was dismissed by this Court in 310 U. S. 611, where it was said:

> "The motion to dismiss is granted and the appeal is dismissed for want of a substantial federal question. *Hendrick* v. *Maryland*, 235 U. S. 610; *Hicklin* v. *Coney*, 290 U. S. 169, 173; *Carley & Hamilton* v. *Snook*, 281 U. S. 66, 72-73; *Arthur* v. *Indiana*, 309 U. S. 630."

In addition this Court and state courts of last resort have uniformly sustained annual flat license fees applicable alike to private carriers and carriers for hire. *Continental Baking Co.* v. *Woodring*, 286 U. S. 352; *Saviers* v. *Smith*, 101 Ohio St. 132, 128 N. E. 269; *Solberg* v. *Davenport*, 211 Iowa 612, 232 N. W. 477; *ExParte Kessler*, 26 Idaho 764, 146 Pac. 113.

IV.

Section 20 of the Act is not Violative of Section 8 or Section 10 of Article I or of Amendment XIV of the Constitution of the United States.

In point II of their brief appellants assail Section 20 of the 1951 Act (Ill. Rev. Stat. 1951, Chap. 95½, Sec. 22) as being violative of the commerce clause and the Fourteenth Amendment and also as being violative of Section 10 of Article I of the Federal Constitution.

Section 20 of the Act contains so-called reciprocity provisions under which Illinois offers to all nonresidents the right to operate their motor vehicles over Illinois highways without the payment of motor vehicle license taxes to the extent that the state of the nonresident grants like exemptions and privileges to residents of Illinois. This provision in substantially its present form has been in the Motor Vehicle Law of Illinois since 1919.

At pages 14 and 15 of their brief appellants set forth six numbered specifications wherein they assert Section 20 is violative of the Fourteenth Amendment and the commerce clause of the Federal Constitution. In substance these contentions of the appellants are as follows:

1. That Section 20 is discriminatory in that residents of Illinois are required to pay motor vehicle license taxes whereas nonresidents from reciprocal states are permitted to use the Illinois highways without the payment of such taxes.

2. That by the charging of a motor vehicle license tax to a motor vehicle operator from a nonreciprocal state Illinois imposes an unlawful burden on interstate commerce and discriminates against such nonresident from a nonreciprocal state in favor of a nonresident from a reciprocal state.

Appellants cite no authorities whatsoever in support of the contentions made in point II of their brief and, indeed, they could not, for the decisions of the courts are uniformly directly contrary to the arguments advanced.

The first contention concerning discrimination against Illinois residents in favor of nonresidents from reciprocal states, is completely answered by *Storaasli* v. *Minnesota*, 283 U. S. 57. The plaintiff resided on the United States Military Reservation at Ft. Snelling, within Minnesota. For all purposes of the case he was treated by the State of Minnesota and by this Court as a resident of Minnesota. He complained that Minnesota discriminated against him by requiring him to pay a tax for the use of the highways by his automobile while it permitted nonresidents from reciprocal states to drive their cars in Minnesota without charge. Holding the statute valid this Court said with respect to reciprocity provisions (p. 63):

"But, as was pointed out in *Kane* v. *New Jersey*, 242 U. S. 160, the absence of any such provision in favor of nonresidents, would not render the law discriminatory. A resident of the State who desires to operate his car for a single day is liable for the entire year's tax. If the State determines to extend a privilege to nonresidents, it may with propriety limit the concession to those who have duly registered their vehicles in another State or country. The mere fact that appellant has not so registered his car and cannot, therefore, bring himself within the class benefited by the exemption, does not create a discrimination against him."

In addition, attention is called to the following decisions of state courts of last resort to the same effect: *State* v. *Caplan*, 100 Vt. 140, 135 Atl. 705, 710; *Lillard* v. *Melton*, 103 So. Car. 10, 87 S. E. 421, 424; *State* v. *Lawrence*, 108 Miss. 291, 66 So. 745, 747; *City of Newport* v. *Merkel Bros. Co.*, 156 Ky. 580, 161 SW 549; *Ex Parte Schuler*, 167 Cal. 282, 139 Pac. 685; *City of Ft. Smith* v. *Scruggs*, 70 Ark. 549, 69 SW 679.

The second contention with respect to discrimination against nonresidents from nonreciprocal states in favor of nonresidents from reciprocal states and with respect to the alleged burden upon interstate commerce is likewise completely refuted by the decision of this Court in *Kane* v. *New Jersey*, 242 U. S. 160. Kane, a resident of New York, claimed that an act of New Jersey violated the commerce clause of the Federal Constitution because New Jersey required him to obtain a New Jersey license for a full year for one trip into the state. Kane claimed that the New Jersey law violated the commerce clause because it did not contain a reciprocal provision. In deciding against Kane the Court said (p. 168) with respect to reciprocal provisions:

"Such a provision promotes the convenience of owners and prevents the relative hardship of having to pay

> the full registration fee for a brief use of the highways. It has become common in state legislation; and New Jersey has embodied it in her law since the trial of this case in the lower court. But it is not an essential of valid regulation. Absence of it does not involve discrimination against non-residents; for any resident similarly situated would be subjected to the same imposition."

We again wish to call to the attention of the Court that all of the appellants in this case are residents of Illinois and that none is a nonresident from a nonreciprocal state. Hence none of the appellants here has standing to plead the grievance, if any, of a nonresident of Illinois from a nonreciprocal state. *Clark* v. *Paul Gray, Inc.*, 306 U. S. 583, 595-596; *Hendrick* v. *Maryland*, 235 U. S. 610, 621.

At pages 15 and 17 of their brief appellants, again without the citation of authorities, assert that Section 20 is violative of Section 10 of Article I of the United States Constitution. This constitutional provision provides in part:

> "No State shall, without the Consent of the Congress, . . . enter into any Agreement or Compact with another State . . .".

It should be noted that Section 20 of the Act is divided into two paragraphs. The first paragraph provides for reciprocity as to nonresidents of Illinois to the extent that the states of the nonresidents grant like exemptions and privileges to residents of Illinois. The second paragraph of Section 20 grants authority to the Secretary of State to "effectuate the purposes" of the first paragraph by entering into reciprocal agreements with representatives of other states.

That appellants' contention is without merit is demonstrated by *Dixie Wholesale Grocery* v. *Martin*, 278 Ky. 705,

129 S. W. 2d 181. There Kentucky and Ohio had an agreement for the interchange of information as to the sales and use of cigarettes in their respective states, for the purpose of determining whether cigarettes sold in one state had been taxed in the other. If it appeared that the taxes had been paid in one state, it was considered that the sale had been made there and that the tax in the other state would not apply. This agreement was attacked as violative of the constitutional provision referred to above.

The Kentucky court said (129 S. W. 2d 184):

> "The reciprocal agreement between Ohio and Kentucky for the exchange of data contained in the sales tax reports required of certain businesses conducted within their respective borders does not conflict with Article I, Section 10, of the Federal Constitution, U. S. C. A., prohibiting one state from entering into a compact with another. This section has reference to political compacts, alliances and treaties."

The Kentucky court then quoted from *Virginia* v. *Tennessee*, 148 U. S. 503, as follows:

> "There are many matters upon which different states may agree that can in no respect concern the United States."

The Supreme Court of Kentucky then concluded as follows (129 S. W. 2d 184):

> "A mere reading of this section shows conclusively it has no application to such reciprocal agreement as has been entered into between Kentucky and Ohio in an effort to keep their respective tax laws from being evaded."

This Court denied certiorari, 308 U. S. 609.

In *Virginia* v. *Tennessee*, 148 U. S. 503, this Court said at page 519:

> "Looking at the clause in which the terms 'compact' or 'agreement' appear, it is evident that the prohibi-

tion is directed to the formation of any combination tending to the increase of political power in the States, which may encroach upon or interfere with the just supremacy of the United States."

Again in *St. Louis & San Francisco Railway Co.* v. *James*, 161 U. S. 545, this Court at page 562 of its opinion stated that reciprocal legislation:

"... on the part of two or more States is not, in the absence of inhibitory legislation by Congress, regarded as within the constitutional prohibition of agreements or compacts between States."

This Court will take judicial notice of the fact that the great majority of the States in the United States have enacted reciprocal legislation similar to the Illinois act containing authorizations to their administrative officers to enter into reciprocal agreements with the representatives of other States. So far as we have been able to ascertain no court has ever held such reciprocal legislation or the reciprocal agreements entered into pursuant thereto to be violative of the Federal Constitution. On the contrary, this Court has considered motor vehicle acts containing reciprocal legislation similar to that of Illinois, and although the unconstitutionality of the reciprocal provisions was not specifically raised by the parties, this Court, with the law before it containing such provision, upheld the validity of the entire act. See, *Hendrick* v. *Maryland*, 235 U. S. 610, 620-621. Also, this Court has commented favorably with respect to such reciprocal legislation in *Kane* v. *New Jersey*, 242 U. S. 160, 168:

"Such a provision promotes the convenience of owners and prevents the relative hardship of having to pay the full registration fee for a brief use of the highways. It has become common in state legislation; and New Jersey has embodied it in her law since the trial of this case in the lower court."

In addition to the contentions raised in point II of their brief concerning the unconstitutionality of Section 20 appellants in point III of their brief, at page 17, make the assertion, again without citation of supporting authorities, that the 1951 Act constitutes "an unlawful delegation of legislative power which is prohibitive, in that it authorizes the Secretary of State to enter into agreements with other States, permitting the operation of vehicles without registration or the paying of permit fees or flat taxes." Appellants point to no provision of the Federal Constitution which they claim is violated because of the alleged unlawful delegation of legislative power. Indeed, they could not for such assertion raises no question cognizable under the Federal Constitution.

In *Highland Farms Dairy, Inc.* v. *Agnew*, 300 U. S. 608, this Court said (p. 612):

> "The argument for the appellants is that in this there was a grant of discretionary power overpassing the limits of lawful delegation.
>
> "The Constitution of the United States in the circumstances here exhibited has no voice upon the subject. The statute challenged as invalid is one adopted by a state. This removes objections that might be worthy of consideration if we were dealing with an act of Congress. How power shall be distributed by a state among its governmental organs is commonly, if not always, a question for the state itself."

In the case at bar the Supreme Court of Illinois in its opinion stated, (412 Ill. 204, 232; R. 290, 291):

> "Our conclusion that the reciprocity provision of the act merely empowers the Secretary of State to ascertain which States grant reciprocity to Illinois residents and to embody his findings in the official form of a 'reciprocity agreement' not only disposes of plaintiffs' contention that the act delegates legislative authority but also disposes of plaintiffs' contention that such reciprocity agreements violate that provision of

> section 10 of article I of the constitution of the United States which provides that 'No State shall, without the Consent of the Congress, * * * enter into any Agreement or Compact with another State.'"

The decision of the Supreme Court of Illinois with respect to the delegation of legislative power of the State is "'decisive and controlling everywhere'", *Highland Farms Dairy, Inc.* v. *Agnew*, 300 U. S. 608, 613.

In any event, the appellants' contention with respect to an unlawful delegation of legislative authority is not contained in the Specification of Errors in their brief and therefore may not properly be argued before this Court.

In point numbered 6 on page 15 of appellants' brief it is asserted that Section 20 of the Act enables the Secretary of State of Illinois "to arbitrarily impose a burden on Interstate Commerce as to classes of vehicles and types of commerce." The exact meaning of appellants' contention is not clear but presumably they mean to say that the provisions of Section 20 are so vague, indefinite and uncertain as to repose arbitrary discretion in the hands of the Secretary of State and as to be violative of the Fourteenth Amendment. That such is not the case is made clear by the opinion of the Supreme Court of Illinois, wherein the court says with respect to the meaning of the second paragraph of Section 20, (412 Ill. 204, 232; R. 290):

> "Such statute limits the authority of the Secretary of State to ascertainment of the existence and scope of reciprocal legislation, and whether, in fact, reciprocity can be granted under the provisions of section 20."

Again this finding by the Illinois Supreme Court leaves no federal question open here. *Highland Farms Dairy, Inc.* v. *Agnew*, 300 U. S. 608, 613; *Hicklin* v. *Coney*, 290 U. S. 169, 172.

V.

The Provisions of Section 9 of the 1951 Act Relating to Busses Operating within Municipalities or a Close Radius Thereof do not Constitute an Unlawful Delegation of Legislative Authority and are not Subject to Objection on the Ground of Indefiniteness.

In point III, at pages 15 and 16 of their brief, appellants assert the contention that the provisions of Section 9(1) (7) constitute an unlawful delegation of authority to the Secretary of State and that the word "municipality" and the phrase "or a close radius thereof" are so indefinite and uncertain as to be violative of some provision of the Federal Constitution not specified by appellants. Again, no authority whatsoever is cited by the appellants. Appellants' contentions are completely refuted by the following:

1. The Specification of Errors contained in their brief does not assign as error any question concerning the unlawful delegation of state legislative authority.

2. The Illinois Supreme Court (412 Ill. 204, 228, 230; R. 287-289) found specifically that the word "municipalities" and the phrase "or a close radius thereof" are definite and certain and that the assailed provisions of Section 9 do not amount to an unconstitutional delegation of legislative authority. With reference to the meaning of the term "municipalities" the Supreme Court of Illinois said (412 Ill. 204, 229; R. 288):

> "It is therefore apparent that the legislature by the use of the word 'municipalities' in the statute in question intended to and did refer only to cities, villages and incorporated towns."

With reference to the phrase "or a close radius thereof" the Supreme Court of Illinois stated (412 Ill. 204, 230; R. 289):

> "Thus the phrase 'or a close radius thereof' expresses a well-recognized, ascertainable, unambiguous concept."

Further the court said (412 Ill. 204, 230; R. 289):

> "Subsection (l) (7) of section 9 of the amended act is not vague, indefinite and thereby unconstitutional, nor does it contain an unconstitutional delegation of legislative authority."

This finding of the Supreme Court of Illinois is final and controlling and presents no federal question for review by this Court. *Highland Farms Dairy, Inc.* v. *Agnew*, 300 U.S. 608, 613; *Hicklin* v. *Coney*, 290 U. S. 169, 172.

3. In any event it is well established that vehicles operating only within a city and a nearby area may properly be separately classified and subjected to lower license taxes than vehicles carrying on a wider scope of operations. *Continental Baking Co.* v. *Woodring*, 286 U. S. 352, 369, 370. Likewise passenger busses may properly be separately classified and taxed at lower rates than those applicable to freight carrying vehicles. *Sproles* v. *Binford*, 286 U. S. 374, 395, 396.

It should be noted that none of the appellants in this case are engaged in operating passenger-carrying busses and hence none have standing to claim that provisions of the statute relating to a class to which they do not belong are too vague and indefinite. *Clark* v. *Paul Gray, Inc.*, 306 U. S. 583, 595; *Hendrick* v. *Maryland*, 235 U. S. 610.

Conclusion.

For the reasons contained in the argument above, it is respectfully submitted that the final judgment of the Supreme Court of Illinois should be affirmed.

Respectfully submitted,

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APPENDIX I.

An Act *to amend Sections 9, 11a and 20 and to repeal Sections 9b, 9c, 9d, 9e, 9f, 9g, 9h, 9i, 9j, 9k and 9l of the "Motor Vehicle Law," approved June 30, 1919, as amended.*

Be it enacted by the People of the State of Illinois, represented in the General Assembly:

Section 1. Sections 9, 11a and 20 of the "Motor Vehicle Law", approved June 30, 1919, as amended, are amended to read as follows:

§ 9. All owners of vehicles of the second division as described in Section 2 of this Act, which are designed or equipped or used for carrying freight, goods, wares or merchandise, and all owners of vehicles of said first division which have been remodeled and are being used for such purposes, and all owners of self-propelled vehicles operated as tractors to the weights of which are added the gross weights of the heaviest semi-trailers with their loads used with such tractors, and all owners of vehicles of said second division which are used for carrying more than seven persons, shall pay to the Secretary of State for each calendar year from and after January 1, 1936, for the use of the public highways of this State, a license fee of five dollars ($5.00) for each such vehicle.

Every application for registration of a truck subject to regulation under the provisions of "An Act in relation to the regulation of the operations of trucks designed or used for the transportation of property", approved July 25, 1939, as amended, shall, be accompanied by proof that a valid and unrevoked certificate of safety has been issued for each such truck. No certificate of registration or license plates shall be issued by the Secretary of State to the owner of any such truck unless such proof accompanies such application.

Every owner of a motor vehicle subject to the provisions of this section shall pay to the Secretary of State for each calendar year from and after January 1, 1952, for the use of the public highways a tax at the following rates, to-wit:

(a) Vehicles having a gross weight of three thousand (3000) pounds and less, including the weight of the vehicle and maximum load, $5.00.

(b) Vehicles having a gross weight of more than three thousand (3000) pounds and not more than eight thousand (8000) pounds, including the weight of the vehicle and maximum load, $15.00 until January 1, 1954, and thereafter $21.00.

(c) Vehicles having a gross weight of more than eight thousand (8000) pounds and not more than ten thousand (10,000) pounds, including the weight of the vehicle and maximum load, $41.00 until January 1, 1954, and thereafter $58.00.

(d) Vehicles having a gross weight of more than ten thousand (10,000) pounds and not more than twelve thousand (12,000) pounds, including the weight of the vehicle and maximum load, $62.00 until January 1, 1954, and thereafter $87.00.

(e) Vehicles having a gross weight of more than twelve thousand (12,000) pounds and not more than fourteen thousand (14,000) pounds, including the weight of the vehicle and maximum load, $81.00 until January 1, 1954, and thereafter $114.00.

(f) Vehicles having a gross weight of more than fourteen thousand (14,000) pounds and not more than sixteen thousand (16,000) pounds, including the weight of the vehicle and maximum load, $101.00 until January 1, 1954, and thereafter $141.00.

(g) Vehicles having a gross weight of more than sixteen thousand (16,000) pounds, and not more than twenty thousand (20,000) pounds, including the weight of the vehicle and maximum load, $154.00 until January 1, 1954, and thereafter $216.00.

(h) Four wheel vehicles having a gross weight of more than twenty thousand (20,000) pounds, and vehicles having more than four wheels, having a gross weight of more than twenty thousand (20,000) pounds, and not more than twenty-four thousand (24,000) pounds, including the weight of the vehicle and maximum load, $251.00 until January 1, 1954, and thereafter $352.00.

(h-1) Four wheel vehicles designed and used for the carrying of more than seven passengers and equipped with balloon tires and hydraulic shock absorbers and having a gross weight of more than twenty-four thousand (24,000) pounds and not in excess of thirty-six thousand (36,000) pounds, including the weight of the vehicle and maximum load, $389.00 until January 1, 1954, and thereafter $545.00.

(i) Four or more wheeled vehicles having a gross weight of more than twenty-four thousand (24,000) pounds and not in excess of thirty thousand (30,000) pounds, including the weight of the vehicle and maximum load, $420.00 until January 1, 1954, and thereafter $588.00.

Six or more wheeled vehicles having a gross weight of more than thirty thousand (30,000) pounds and not in excess of thirty-six thousand (36,000) pounds, including the weight of the vehicle and maximum load, $579.00 until January 1, 1954, and thereafter $810.00.

Six or more wheeled vehicles having a gross weight of over thirty-six thousand (36,000) pounds, but not exceeding forty-one thousand (41,000) pounds, including the weight of the vehicle and maximum load, $635.00 until January 1, 1954, and thereafter $890.00.

(i-1) Six or more wheeled vehicles having a gross weight of more than forty-one thousand (41,000) pounds, but not exceeding forty-five thousand (45,000) pounds, including the weight of the vehicle and maximum load, $700.00 until January 1, 1954, and thereafter $980.00.

(i-2) Eight or more wheeled vehicles having a gross weight of more than forty-five thousand (45,000) pounds, but not exceeding fifty thousand (50,000) pounds, including the weight of the vehicle and maximum load, $784.00 until January 1, 1954, and thereafter $1098.00.

(i-3) Eight or more wheeled vehicles having a gross weight of over fifty thousand (50,000) pounds, including the weight of the vehicle and maximum load, $889.00 until January 1, 1954, and thereafter $1245.00.

(i-4) Ten or more wheeled vehicles having a gross weight of more than fifty thousand (50,000) pounds,

but not exceeding seventy-two thousand (72,000) pounds, including the weight of the vehicle and maximum load, $1134.00 until January 1, 1954, and thereafter $1588.00.

(j) A self-propelled vehicle operated as a tractor and one semi-trailer shall be considered as one vehicle in computing the above license fees. A semi-trailer used with any device for converting it to a trailer or attached to a leading trailer or semi-trailer shall be licensed as a trailer.

(k) Each additional semi-trailer to be used with a tractor licensed as above, $5.00.

(l) Tractors, traction engines or other similar vehicles used for hauling purposes, except as hereinafter provided, shall pay the same fees according to their weight as hereinbefore required in this section of other vehicles. All owners of trailers used with a motor vehicle shall pay to the Secretary of State for each calendar year from and after January 1, 1952, flat weight taxes for the use of the public highways of this State at the following rates to-wit:

(1) Trailers having a gross weight of 2,000 pounds and less, including the weight of the trailer and maximum load, $1.00.

(2) Trailers having a gross weight of more than 2,000 pounds, and not more than 5,000 pounds, including the weight of the trailer and maximum load, $15.00 until January 1, 1954, and thereafter $21.00.

(3) Trailers having a gross weight of more than 5,000 pounds, and not more than 10,000 pounds, including the weight of the trailer and maximum load, $44.00 until January 1, 1954, and thereafter $61.00.

(4) Trailers having a gross weight of more than ten thousand (10,000) pounds, and not more than fifteen thousand (15,000) pounds, including the weight of the trailer and maximum load, $79.00 until January 1, 1954, and thereafter $111.00.

(5) Trailers having a gross weight of more than fifteen thousand (15,000) pounds, and not more than twenty thousand (20,000) pounds, including the weight of the trailer and maximum load, $125.00 until January 1, 1954, and thereafter $175.00.

(6) Trailers having a gross weight of more than twenty thousand (20,000) pounds, and not more than thirty-two thousand (32,000) pounds, including the weight of the trailer and maximum load, $557.00 until January 1, 1954, and thereafter $780.00.

(7) Trailers having a gross weight of more than thirty-two thousand (32,000) pounds, including the weight of the trailer and maximum load, $557.00 until January 1, 1954, and thereafter $780.00.

Two axle vehicles which are designed and used for transporting more than seven passengers entirely within the territorial limits of a single municipality or a single municipality and municipalities contiguous thereto, or a close radius thereof, are equipped with hydraulic shock absorbers and whose rates for transportation are subject to the regulation of the Illinois Commerce Commission, a tax at the following rates:

(1) Such vehicles having a gross weight of more than 12,000 pounds but not exceeding 14,000 pounds including the weight of the vehicle and the maximum load, $45;

(2) Such vehicles having a gross weight of more than 14,000 pounds but not exceeding 16,000 pounds including the weight of the vehicle and the maximum load, $70;

(3) Such vehicles having a gross weight of more than 16,000 pounds but not exceeding 20,000 pounds including the weight of the vehicle and the maximum load, $105;

(4) Such vehicles having a gross weight of more than 20,000 pounds but not exceeding 24,000 pounds including the weight of the vehicle and the maximum load, $145;

(5) Such vehicles having a gross weight of more than 24,000 pounds but not exceeding 36,000 pounds including the weight of the vehicle and the maximum load, $195.

The registration fee paid by the State of Illinois, or by any county, township, municipal corporation, city, village or incorporated town for each motor vehicle of the second division owned and operated by

it, or by any school district for each motor vehicle of the second division owned and operated by it as a school bus, shall be two dollars for each calendar year.

Upon the filing in the office of the Secretary of State of said application and payment of the registration fee as hereinbefore provided, the Secretary of State, or his duly authorized agent, shall, without further fee, assign to such trailer or semi-trailer as described in said application, a distinctive number plate which shall be attached to the rear of the trailer or semi-trailer. Such license plate shall be so attached as not to swing loosely and shall be not less than twenty inches above the surface of the ground. It shall at all times be kept clean from grease and dirt. None of the owners of the vehicles of said second division shall be required to pay the registration fees in section 8 of this Act. Provided, that none of the provisions of this Act requiring or prescribing registration shall be construed to include farm tractors, traction engines, threshing machines, clover huller, ensilage cutters, corn shredders, corn sheller, corn grinders, hay presses, portable saw mills, binders, combines, farm machinery and implements, farm wagons, or like vehicles, trailers or semi-trailers used in connection therewith, which are used primarily in the agricultural pursuits of the owner thereof or in connection with the agricultural pursuits of others, or vehicles used exclusively for moving water well drilling outfits, but nothing in this proviso shall exclude from registration truck tractors, trucks, trailers, or semi-trailers engaged in transporting agricultural products. The owner of any motor vehicle of the second division having a corn sheller, a well driller, hay press, clover huller or farm machinery permanently mounted thereon and used solely for transporting the same, shall pay the license fee of five dollars ($5.00), provided in the first paragraph of this section and shall be exempt from the flat weight tax provided in this Act; Provided, that no such owner shall be entitled to any reduction in such five dollar ($5.00) license fee for the reason that such fee may first become payable during the second half of the calendar year.

§ 11a. Any person, firm or corporation who shall violate any of the provisions of Sections 3a, 9 or 10 shall be subject to a penalty of not less than $10.00, nor more than $100.00 for each offense, together with costs of suit, and shall also be held liable for the payment of all damages caused to any public highway by such violation. Any vehicle used in violation of any section of this Act and thereby causing damage to any public highway shall be subject to a lien for the full amount of all unpaid registration fees, flat weight fees, penalties and damages; provided, however, that such lien shall not release the offender from the full payment of all registration fees, flat weight fees, penalties and damages which may be due from him or be recovered against him in any court of competent jurisdiction and, provided, also that such lien shall not be superior to any chattel mortgage or other lien attaching to such vehicle.

§ 20. Except as herein provided for foreign corporations, the provisions of sections 8, 9, 10, 14, 17, and 27 of this Act, shall not apply to any other motor vehicle or motor bicycle owned by non-residents of this State if the owner thereof has complied with the law requiring the registration of motor vehicles or motor bicycles or the names of the owners thereof in force in the city, state, foreign country or province, territory or Federal district of his residence and the registration number showing the initial or abbreviation of the name of such city, state, foreign country or province, territory or Federal district, is displayed on such vehicle substantially as is provided in section 14 of this Act: Provided, that the provisions of this section shall be operative as to a motor vehicle or motor bicycle owned by a non-resident of this State only to the extent that under the laws of the city, state, foreign country or province, territory or Federal district of his residence, like exemptions and privileges are granted to motor vehicles or motor bicycles duly registered under the laws of and owned by the residents of this State. If, under the laws of such city, state, foreign country or province, territory or Federal district, motor vehicles or motor bicycles owned by residents of this State, operating upon the highways of

such city, state, foreign country or province, territory or Federal district, are required to pay the registration fee and carry the license plates or pay any other fee or tax to such city, state, foreign country or province, territory or Federal district, the motor vehicles or motor bicycles owned by residents of such city, state, foreign country or province, territory or Federal district, and operating upon the highways of this State shall comply with the provisions of sections 8, 9, 10, 14, 17 and 27 of this Act. Foreign corporations, partnerships and individuals owning, maintaining or operating places of business in this State and using motor vehicles or motor bicycles in connection with such places of business, shall comply with the provisions of sections 8, 9, 10, 14, 17 and 27 of this Act insofar as the motor vehicles and motor bicycles used in connection with such places of business are concerned.

In order to effectuate the purposes of this section, the Secretary of State of Illinois shall have authority to enter into reciprocal agreements with the responsible officers of other states as to licenses, permit fees and flat taxes under which motor vehicles, trucks, tractors, trailers or semi-trailers properly licensed or registered in other states may be operated in this State without an Illinois registration or the payment of permit fees or flat taxes; provided like privileges are accorded to vehicles owned by Illinois citizens when operated in such other states.

§ 2. Sections 9b, 9c, 9d, 9e, 9f, 9g, 9h, 9i, 9j, 9k and 91 of said Act as repealed.

§3. This amendatory act shall be effective January 1, 1952.

APPENDIX II

COMPARISON OF REGISTRATION FEES FOR TRUCKS AND BUSSES OF VARIOUS GROSS WEIGHTS